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November 6, 2003David Saliwanchik

David R. Saliwanchik, Patent Attorney

ELECTION UNDER 35 USC § 121

Examining Group 1651

Patent Application

Docket No. GJE-68

Serial No. 09/856,944

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner : Vera Afremova  
Art Unit : 1651  
Applicants : John Ernest Hart  
Serial No. : 09/856,944  
Conf. No. : 6466  
Filed : May 30, 2001  
For : Isolated Material Having An Anti-organotrophic Effect

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

ELECTION UNDER 35 USC §121

Sir:

In response to the written Restriction Requirement dated October 6, 2003, the Applicant hereby elects, with traverse, to prosecute the Group I claims, i.e. claims 1, 3-6, 8 and 11-14, drawn to a material derived from ovarian venous blood and having molecular weight within 10-30 kDa and to a pharmaceutical composition with the material.

The applicant respectfully traverses the Restriction Requirement as being legally incorrect and particularly inappropriate under the circumstances. First, in the original application, from which this Request for Continued Examination was filed, the product claims and the method claims were examined. Please note that, if the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims

to independent or distinct inventions (MPEP § 803 *et seq.*). It is unclear why the examination of all of the claims would now be a serious burden when it was not in the original case.

Furthermore, the applicants respectfully submit that, contrary to what is stated in the Restriction Requirement, there is a unifying technical feature to the claims that have been presented for examination. Please note that in characterizing the technical features of the composition the Restriction Requirement omits perhaps the most important technical features- that the material is inducible by clomiphene and has the ability to reduce organ mass of body organs including non-gonadal organs.

As has been described in detail in the original application, and now further explained in Dr. Hart's declaration, the currently-claimed composition is simply not the same as that which is disclosed in the prior art.

Accordingly, the applicant respectfully requests examination at this time of all of the pending claims. Alternatively, if this request is denied, the applicant respectfully requests re-joinder of the method claims upon an indication of allowability of the composition claims.

The Commissioner is hereby authorized to charge any fees under 37 CFR 1.16 or 1.17 as required by this paper to Deposit Account 19-0065.

The Applicants invite the Examiner to call the undersigned if clarification is needed on any aspect of this amendment.

Respectfully submitted,



David R. Saliwanchik

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**TO:** Examiner Vera Afremova

**FROM:** David R. Saliwanchik

**COMPANY:** U.S. Patent Office  
Art Unit 1651

**DATE:** November 6, 2003

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Re: Serial No. 09/856,944; filed May 30, 2001

- 1) Election Under 35 U.S.C. §121 (2 pages)

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